

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN SENATE JUNE 18, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2688

**Introduced by Committee on Revenue and Taxation (Perea (Chair),
Beall, Charles Calderon, Cedillo, Fuentes, and Gordon)**

March 12, 2012

An act to amend Sections 1154, 6055, 6203.5, ~~6355, 7096, 7261, and 7262, 9274, 30459.4, 32474, 40214, 41174, 43525, 45870, 46625, 50156.14, 55335, and 60633.1~~ of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL’S DIGEST

AB 2688, as amended, Committee on Revenue and Taxation. Property ~~taxes: air taxi: definition: State Board of Equalization: worthless accounts: bullion and coins: taxes and~~ transaction and use ~~taxes: erroneous charges: taxes.~~

Existing law requires the personal property of an air carrier to be taxed at its fair market value, and the California Constitution requires property subject to ad valorem property taxation to be assessed in the county in which it is situated. Existing law requires air taxis which are operated in scheduled air taxi operations to be assessed pursuant to a specified formula, and requires all other air taxis to be assessed in the same manner as personal property, as provided. Existing law defines “air taxi” for purposes of these provisions to mean an aircraft used by an air carrier which does not utilize aircraft having a maximum passenger capacity, as provided, and which does not hold a specified certificate or other economic authority, as provided.

The bill would revise the definition of “air taxi,” as provided.

Existing sales and use tax laws authorize a deduction or refund of tax in the case of worthless and written-off accounts held by a retailer or lender under specified circumstances, which include establishing a proper election by filing an election with the State Board of Equalization before claiming the deduction or refund.

This bill would instead require the proper election to be established by the retailer and lender preparing and retaining an election form that would not need to be prepared or retained prior to claiming any deduction or refund.

~~Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes, including an exemption for the gross receipts from the sales in bulk of monetized bullion, nonmonetized gold and silver bullion, and numismatic coins, and the storage, use, or other consumption of those bullion and coins, as provided, and requires the State Board of Equalization to adjust the initial bulk threshold amount on or before September 1.~~

~~This bill would change the adjustment date to October 1.~~

Existing laws authorize districts, as specified, to levy, increase, or extend a transactions and use tax in accordance with the Transactions and Use Tax Law. The Transactions and Use Tax Law requires that the ordinance proposing the tax include certain provisions, including a provision imposing a transactions and use tax at a rate of 0.25%, or a multiple thereof.

This bill would instead authorize the levy, increase, or extension of a transactions and use tax at a rate of 0.125%, or a multiple thereof.

~~Existing law requires the State Board of Equalization to administer the Sales and Use Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law, and authorizes the board to undertake collection action on delinquent accounts, including issuing a levy or notice to withhold. Under existing sales and use tax laws, a taxpayer~~

~~may file a claim with the board for reimbursement of bank charges or any other reasonable 3rd-party check charge fees incurred by the taxpayer as a direct result of an erroneous levy or notice to withhold by the board or erroneous processing or collection action, within 90 days of the date of the board action. Under the other laws, a taxpayer may only file a claim for those charges or fees incurred as a direct result of an erroneous levy or notice to withhold.~~

~~This bill would extend to those other laws, the authorization for a taxpayer to also file a reimbursement claim with the board for bank charges and other reasonable 3rd-party check charge fees incurred as a direct result of an erroneous processing action or erroneous collection action by the board within 90 days of the board action. This bill would, under those other laws and the sales and use tax laws, allow the board to extend the 90-day filing period for reasonable cause.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1154 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 1154. (a) As used in this section, “air taxi” means aircraft used
- 4 by an air carrier which does not utilize aircraft having a maximum
- 5 passenger capacity of more than 60 seats or a maximum payload
- 6 capacity of more than 18,000 pounds in air transportation and
- 7 which holds a certificate of public convenience and necessity or
- 8 other economic authority issued by the United States Department
- 9 of Transportation, or its successor.
- 10 (b) Air taxis which are operated in scheduled air taxi operations
- 11 are not subject to the provisions of Part 10 (commencing with
- 12 Section 5301) of this division and shall be assessed in accordance
- 13 with the allocation formula set forth in Section 1152.
- 14 (c) All other air taxis shall be assessed in the county where the
- 15 aircraft is habitually situated in the same manner and at the same
- 16 ratio as other personal property in the county subject to general
- 17 property taxation. Such aircraft shall be taxed at the same rate and
- 18 in the same manner as all other property on the unsecured roll.
- 19 SEC. 2. Section 6055 of the Revenue and Taxation Code is
- 20 amended to read:

6055. (a) A retailer is relieved from liability for sales tax that became due and payable, insofar as the measure of the tax is represented by accounts that have been found to be worthless and charged off for income tax purposes by the retailer or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. A retailer that has previously paid the tax may, under rules and regulations prescribed by the board, take as a deduction the amount found worthless and charged off by the retailer. If these accounts are thereafter in whole or in part collected by the retailer, the amount collected shall be included in the first return filed after the collection and the tax shall be paid with the return. For purposes of this subdivision, the term “retailer” shall include any entity affiliated with the retailer under Section 1504 of Title 26 of the United States Code.

(b) (1) In the case of accounts held by a lender, a retailer or lender that makes a proper election under paragraph (4) shall be entitled to a deduction or refund of the tax that the retailer has previously reported and paid if all of the following conditions are met:

(A) A deduction was not previously claimed or allowed on any portion of the accounts.

(B) The accounts have been found worthless and written off by the lender in accordance with the requirements of subdivision (a).

(C) The contract between the retailer and the lender contains an irrevocable relinquishment of all rights to the account from the retailer to the lender.

(D) The retailer remitted the tax on or after January 1, 2000.

(E) The party electing to claim the deduction or refund under paragraph (4) files a claim in a manner prescribed by the board.

(2) If the retailer or the lender thereafter collects in whole or in part any accounts, one of the following shall apply:

(A) If the retailer is entitled to the deduction or refund under the election specified in paragraph (4), the retailer shall include the amount collected in its first return filed after the collection and pay tax on that amount with the return.

(B) If the lender is entitled to the deduction or refund under the election specified in paragraph (4), the lender shall pay the tax to the board in accordance with Section 6451.

(3) For purposes of this subdivision, the term “lender” means any of the following:

1 (A) Any person that holds a retail account which that person
2 purchased directly from a retailer who reported the tax.

3 (B) Any person that holds a retail account pursuant to that
4 person's contract directly with the retailer that reported the tax.

5 (C) Any person that is either an affiliated entity, under Section
6 1504 of Title 26 of the United States Code, of a person described
7 in subparagraph (A) or (B), or an assignee of a person described
8 in subparagraph (A) or (B).

9 (4) For purposes of this section, a "proper election" shall be
10 established when the retailer that reported the tax and the lender
11 prepare and retain an election form, signed by both parties,
12 designating which party is entitled to claim the deduction or refund.
13 This election may not be amended or revoked unless a new
14 election, signed by both parties, is prepared and retained by the
15 retailer and the lender.

16 SEC. 3. Section 6203.5 of the Revenue and Taxation Code is
17 amended to read:

18 6203.5. (a) A retailer is relieved from liability to collect use
19 tax that became due and payable, insofar as the measure of the tax
20 is represented by accounts that have been found to be worthless
21 and charged off for income tax purposes by the retailer or, if the
22 retailer is not required to file income tax returns, charged off in
23 accordance with generally accepted accounting principles. A
24 retailer that has previously paid the amount of the tax may, under
25 rules and regulations prescribed by the board, take as a deduction
26 the amount found worthless and charged off by the retailer. If these
27 accounts are thereafter in whole or in part collected by the retailer,
28 the amount collected shall be included in the first return filed after
29 the collection and the amount of the tax shall be paid with the
30 return. For purposes of this subdivision, the term "retailer" shall
31 include any entity affiliated with the retailer under Section 1504
32 of Title 26 of the United States Code.

33 (b) (1) In the case of accounts held by a lender, a retailer or
34 lender that makes a proper election under paragraph (4) shall be
35 entitled to a deduction or refund of the tax that the retailer has
36 previously reported and paid if all of the following conditions are
37 met:

38 (A) A deduction was not previously claimed or allowed on any
39 portion of the accounts.

1 (B) The accounts have been found worthless and written off by
2 the lender in accordance with the requirements of subdivision (a).

3 (C) The contract between the retailer and the lender contains
4 an irrevocable relinquishment of all rights to the account from the
5 retailer to the lender.

6 (D) The retailer remitted the tax on or after January 1, 2000.

7 (E) The party electing to claim the deduction or refund under
8 paragraph (4) files a claim in a manner prescribed by the board.

9 (2) If the retailer or the lender thereafter collects in whole or in
10 part any accounts, one of the following shall apply:

11 (A) If the retailer is entitled to the deduction or refund under
12 the election specified in paragraph (4), the retailer shall include
13 the amount collected in its first return filed after the collection and
14 pay tax on that amount with the return.

15 (B) If the lender is entitled to the deduction or refund under the
16 election specified in paragraph (4), the lender shall pay the tax to
17 the board in accordance with Section 6451.

18 (3) For purposes of this subdivision, the term “lender” means
19 any of the following:

20 (A) Any person that holds a retail account which that person
21 purchased directly from a retailer who reported the tax.

22 (B) Any person that holds a retail account pursuant to that
23 person’s contract directly with the retailer that reported the tax.

24 (C) Any person that is either an affiliated entity, under Section
25 1504 of Title 26 of the United States Code, of a person described
26 in subparagraph (A) or (B), or an assignee of a person described
27 in subparagraph (A) or (B).

28 (4) For purposes of this section, a “proper election” shall be
29 established when the retailer that reported the tax and the lender
30 prepare and retain an election form, signed by both parties,
31 designating which party is entitled to claim the deduction or refund.
32 This election may not be amended or revoked unless a new
33 election, signed by both parties, is prepared and retained by the
34 retailer and the lender.

35 ~~SEC. 4. Section 6355 of the Revenue and Taxation Code is~~
36 ~~amended to read:~~

37 ~~6355. (a) There are exempted from the taxes imposed by this~~
38 ~~part the gross receipts from the sale in bulk of monetized bullion,~~
39 ~~nonmonetized gold or silver bullion, and numismatic coins that~~
40 ~~are substantially equivalent to transactions in securities or~~

1 commodities through a national securities or commodities exchange
2 and the storage, use, or other consumption in this state of monetized
3 bullion, nonmonetized gold or silver bullion, and numismatic coins
4 so sold.

5 (b) (1) A sale in bulk, for purposes of this section, shall be
6 deemed to have occurred if the amount of monetized bullion,
7 nonmonetized gold or silver bullion, and numismatic coins sold
8 in the transaction totals, in market value, the sum of one thousand
9 dollars (\$1,000) or more, or its equivalent.

10 (2) The board shall adjust the one thousand dollar (\$1,000)
11 amount specified in paragraph (1) as follows:

12 (A) On or before September 1, 1994, and on or before each
13 October 1 of each year thereafter, the board shall multiply the
14 amount applicable for the current calendar year by the inflation
15 factor adjustment determined by the Franchise Tax Board pursuant
16 to subdivision (h) of Section 17041, the resulting amount to be the
17 applicable amount for the succeeding calendar year. The applicable
18 amount shall be operative as an adjustment of the amount specified
19 in paragraph (1) only when the applicable amount computed is
20 equal to or exceeds a new operative threshold, as defined in
21 subparagraph (C).

22 (B) When the applicable amount equals or exceeds an operative
23 threshold specified in subparagraph (C), the resulting applicable
24 amount, rounded to the nearest multiple of five hundred dollars
25 (\$500), shall be operative for purposes of paragraph (1) beginning
26 January 1 of the succeeding calendar year.

27 (C) For purposes of this paragraph, "operative threshold" means
28 an amount that exceeds by at least five hundred dollars (\$500), the
29 greater of either the amount specified in paragraph (1) or the
30 amount computed pursuant to subparagraphs (A) and (B) as the
31 operative adjustment to the amount specified in paragraph (1).

32 (e) "Monetized bullion," for purposes of this section, means
33 coins or other forms of money manufactured of gold, silver, or
34 other metal and heretofore, now, or hereafter used as a medium of
35 exchange under the laws of this state, the United States, or any
36 foreign nation. "Monetized bullion," for purposes of this section,
37 also means gold medallions struck under authority of the American
38 Arts Gold Medallion Act (Title IV of Public Law 95-630).

39 (d) A sale of monetized bullion, nonmonetized gold or silver
40 bullion, or numismatic coins, for purposes of this section, shall be

1 deemed to be substantially equivalent to a transaction in securities
2 or commodities through a national securities or commodities
3 exchange, if the sale is by or through a person registered pursuant
4 to the Commodity Exchange Act (7 U.S.C. Sec. 1 et seq.) or not
5 required to be registered under the Commodity Exchange Act.

6 SEC. 5. ~~Section 7096 of the Revenue and Taxation Code is~~
7 ~~amended to read:~~

8 7096. (a) A taxpayer may file a claim with the board for
9 reimbursement of bank charges and any other reasonable
10 third-party check charge fees incurred by the taxpayer as the direct
11 result of an erroneous levy or notice to withhold, erroneous
12 processing action, or erroneous collection action by the board.
13 Bank and third-party charges include a financial institution's or
14 third party's customary charge for complying with the levy or
15 notice to withhold instructions and reasonable charges for
16 overdrafts that are a direct consequence of the erroneous levy or
17 notice to withhold, erroneous processing action, or erroneous
18 collection action. The charges are those paid by the taxpayer and
19 not waived or reimbursed by the financial institution or third party.
20 Each claimant applying for reimbursement shall file a claim with
21 the board that shall be in the form as may be prescribed by the
22 board. In order for the board to grant a claim, the board shall
23 determine that both of the following conditions have been satisfied:

24 (1) ~~The erroneous levy or notice to withhold, erroneous~~
25 ~~processing action, or erroneous collection action was caused by~~
26 ~~board error.~~

27 (2) ~~Prior to the erroneous levy or notice to withhold, erroneous~~
28 ~~processing action, or erroneous collection action, the taxpayer~~
29 ~~responded to all contacts by the board and provided the board with~~
30 ~~any requested information or documentation sufficient to establish~~
31 ~~the taxpayer's position. This provision may be waived by the board~~
32 ~~for reasonable cause.~~

33 (b) ~~Claims pursuant to this section shall be filed within 90 days~~
34 ~~from the date of the erroneous levy or notice to withhold, erroneous~~
35 ~~processing action, or erroneous collection action. This 90-day~~
36 ~~filing period may be extended by the board for reasonable cause.~~
37 ~~Within 30 days from the date the claim is received, the board shall~~
38 ~~respond to the claim. If the board denies the claim, the taxpayer~~
39 ~~shall be notified in writing of the reason or reasons for the denial~~
40 ~~of the claim.~~

1 ~~SEC. 6.~~

2 *SEC. 4.* Section 7261 of the Revenue and Taxation Code is
3 amended to read:

4 7261. The transactions tax portion of any transactions and use
5 taxes ordinance adopted under this part shall be imposed for the
6 privilege of selling tangible personal property at retail, and shall
7 include provisions in substance as follows:

8 (a) A provision imposing a tax for the privilege of selling
9 tangible personal property at retail upon every retailer in the district
10 at a rate of one-eighth of 1 percent, or a multiple thereof, of the
11 gross receipts of the retailer from the sale of all tangible personal
12 property sold by that person at retail in the district.

13 (b) Provisions identical to those contained in Part 1
14 (commencing with Section 6001), insofar as they relate to sales
15 taxes and are not inconsistent with this part, except that the name
16 of the district as the taxing agency shall be substituted for that of
17 the state and that an additional transactor's permit shall not be
18 required if a seller's permit has been or is issued to the transactor
19 under Section 6067.

20 (c) A provision that all amendments subsequent to the effective
21 date of this part to Part 1 (commencing with Section 6001) relating
22 to sales tax and not inconsistent with this part shall automatically
23 become a part of the transactions and use taxes ordinance.
24 However, no amendment shall operate so as to affect the rate of
25 tax imposed by the district's board.

26 (d) A provision that the amount subject to tax shall not include
27 the amount of sales tax or use tax imposed by the State of
28 California or by any city, city and county, or county pursuant to
29 the Bradley-Burns Uniform Local Sales and Use Tax Law, or the
30 amount of any state-administered transactions or use tax.

31 (e) A provision that there are exempted from the tax the gross
32 receipts from the sale of tangible personal property, other than fuel
33 or petroleum products, to operators of aircraft to be used or
34 consumed principally outside the county in which the sale is made
35 and directly and exclusively in the use of the aircraft as common
36 carriers of persons or property under the authority of the laws of
37 this state, the United States, or any foreign government.

38 (f) A provision that sales of property to be used outside the
39 district which are shipped to a point outside the district, pursuant
40 to the contract of sale, by delivery to that point by the retailer or

1 his or her agent, or by delivery by the retailer to a carrier for
2 shipment to a consignee at such point, are exempt from the tax.

3 For purposes of this section, “delivery” of vehicles subject to
4 registration pursuant to Chapter 1 (commencing with Section 4000)
5 of Division 3 of the Vehicle Code, aircraft licensed in compliance
6 with Section 21411 of the Public Utilities Code, and undocumented
7 vessels registered under Division 3.5 (commencing with Section
8 9840) of the Vehicle Code shall be satisfied by registration to an
9 out-of-district address and by a declaration under penalty of
10 perjury, signed by the buyer, stating that the address is, in fact, his
11 or her principal place of residence.

12 “Delivery” of commercial vehicles shall be satisfied by
13 registration to a place of business out of district and a declaration
14 under penalty of perjury, signed by the buyer, that the vehicle will
15 be operated from that address.

16 (g) A provision that the sale of tangible personal property is
17 exempt from tax if the seller is obligated to furnish the property
18 for a fixed price pursuant to a contract entered into prior to the
19 operative date of the ordinance. A lease of tangible personal
20 property which is a continuing sale of that property is exempt from
21 tax for any period of time for which the lessor is obligated to lease
22 the property for an amount fixed by the lease prior to the operative
23 date of the ordinance. For the purposes of this subdivision, the sale
24 or lease of tangible personal property shall be deemed not to be
25 obligated pursuant to a contract or lease for any period of time for
26 which any party to the contract or lease has the unconditional right
27 to terminate the contract or lease upon notice, whether or not that
28 right is exercised.

29 ~~SEC. 7.~~

30 *SEC. 5.* Section 7262 of the Revenue and Taxation Code is
31 amended to read:

32 7262. The use tax portion of any transactions and use tax
33 ordinance adopted under this part shall impose a complementary
34 tax upon the storage, use, or other consumption in the district of
35 tangible personal property purchased from any retailer for storage,
36 use, or other consumption in the district. The tax shall be at a rate
37 of one-eighth of 1 percent, or a multiple thereof, of the sales price
38 of the property whose storage, use, or other consumption is subject
39 to the tax, and the ordinance shall include provisions in substance
40 as follows:

1 (a) Provisions identical to those contained in Part 1
2 (commencing with Section 6001), insofar as they relate to use
3 taxes and are not inconsistent with this part, except that the name
4 of the district as the taxing agency shall be substituted for that of
5 the state. The name of the district shall be substituted for the word
6 “state” in the phrase “retailer engaged in business in this state” in
7 Section 6203 and in the definition of that phrase.

8 The following additional provisions shall be included:

9 (1) Except as provided in paragraph (2), a retailer engaged in
10 business in the district shall not be required to collect use tax from
11 the purchaser of tangible personal property, unless the retailer
12 ships or delivers the property into the district or participates within
13 the district in making the sale of the property, including, but not
14 limited to, soliciting or receiving the order, either directly or
15 indirectly, at a place of business of the retailer in the district or
16 through any representative, agent, canvasser, solicitor, subsidiary,
17 or person in the district under the authority of the retailer.

18 (2) “A retailer engaged in business in the district” shall also
19 include any retailer of any of the following: vehicles subject to
20 registration pursuant to Chapter 1 (commencing with Section 4000)
21 of Division 3 of the Vehicle Code, aircraft licensed in compliance
22 with Section 21411 of the Public Utilities Code, or undocumented
23 vessels registered under Division 3.5 (commencing with Section
24 9840) of the Vehicle Code. That retailer shall be required to collect
25 use tax from any purchaser that registers or licenses the vehicle,
26 vessel, or aircraft at an address in the district.

27 (b) A provision that all amendments to the provisions of Part 1
28 (commencing with Section 6001) relating to the use tax and not
29 inconsistent with this part shall automatically become a part of the
30 ordinance. However, no amendment shall operate so as to affect
31 the rate of tax imposed by the district’s board.

32 (c) A provision that the amount subject to tax shall not include
33 the amount of any sales tax or use tax imposed by the State of
34 California or by any city, city and county, or county pursuant to
35 the Bradley-Burns Uniform Local Sales and Use Tax Law (Part
36 1.5 (commencing with Section 7200)) or the amount of any
37 state-administered transactions or use tax.

38 (d) A provision that any person subject to a use tax under an
39 ordinance adopted pursuant to this part shall be entitled to credit
40 against that tax or any transactions tax, or to reimbursement for a

1 transactions tax, paid to a district or retailer in a district imposing
2 a transactions and use tax pursuant to this part.

3 (e) A provision that, in addition to the exemptions provided in
4 Sections 6366 and 6366.1, the storage, use, or other consumption
5 of tangible personal property, other than fuel or petroleum products,
6 purchased by operators of aircraft, and used or consumed by the
7 operators directly and exclusively in the use of the aircraft as
8 common carriers of persons or property for hire or compensation
9 under a certificate of public convenience and necessity issued
10 pursuant to the laws of this state, the United States, or any foreign
11 government, is exempt from the use tax.

12 (f) A provision that the storage, use, or other consumption in
13 the district of tangible personal property is exempt from the tax if
14 the purchaser is obligated to purchase the property for a fixed price
15 pursuant to a contract entered into prior to the operative date of
16 the ordinance. The possession of, or the exercise of any right or
17 power over, tangible personal property under a lease which is a
18 continuing purchase of the property is exempt from tax for any
19 period of time for which the lessee is obligated to lease the property
20 for an amount fixed by a lease entered into prior to the operative
21 date of the ordinance. For purposes of this subdivision, the storage,
22 use, or other consumption of, or possession of, or exercise of any
23 right or power over, tangible personal property shall be deemed
24 not to be obligated pursuant to a contract or lease for any period
25 of time for which any party to the contract or lease has the
26 unconditional right to terminate the contract or lease upon notice,
27 whether or not the right is exercised.

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29
30 **All matter omitted in this version of the bill**
31 **appears in the bill as amended in the**
32 **Senate, June 18, 2012. (JR11)**
33